

No. 11626

United States
Circuit Court of Appeals
For the Ninth Circuit.

LILY HO QUON and ALBERT T. QUON,
Petitioners,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

GEORGE T. ALTMAN.

For Commissioner:

H. A. MELVILLE.

Docket No. 5805

LILY HO QUON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1944

Aug. 14—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 15—Copy of petition served on General Counsel.

Sept. 21—Answer filed by General Counsel.

Sept. 21—Request for Circuit hearing in Los Angeles, Cal., filed by General Counsel.

Sept. 26—Notice issued placing proceeding on Los Angeles calendar. Service of answer and request made.

1946

Apr. 16—Hearing set June 10, 1946, Los Angeles.

May 27—Motion for a continuance until after 12/31/46 filed by taxpayer. Granted.

May 31—Motion to consolidate proceedings filed by taxpayer.

Oct. 31—Hearing set 11/4/46, Los Angeles, Cal.

Nov. 13—Hearing had before Judge Hill on merit and 14 its. Motion of counsel to consolidate

1946

granted. Deposition of Albert T. Quon to be taken by Wednesday, 11/20/46, if desired. Simultaneous briefs due 12/30/46. Reply due 1/29/47.

Nov. 18—Stipulation that petitioner in Docket 5806 offer in evidence the original letter to George T. Altman, dated 10/6/43, signed by Albert T. Quon in lieu of deposition of Albert T. Quon filed.

Dec. 4—Transcript of hearing 11/13/46 filed.

Dec. 4—Transcript of hearing 11/14/46 filed.

Dec. 16—Motion for extension to Jan. 28, 1947, to file original briefs and Feb. 27, 1947, to file reply brief filed by taxpayer. 12/17/46 Granted.

1947

Jan. 27—Brief filed by taxpayer. 1/29/47 served.

Jan. 28—Brief filed by General Counsel.

Feb. 24—Reply brief filed by taxpayer. 2/25/47 copy served.

Feb. 26—Granted for extension to March 14, 1947, to file reply brief filed by General Counsel. 2/27/47 Granted.

Mar. 13—Reply brief filed by General Counsel.

Mar. 28—Memorandum findings of fact and opinion rendered, Judge Hill. Decision will be entered for the respondent.

1947

Mar. 31—Decision entered, Judge Hill, Div. 2.

Apr. 14—Petition for review by U. S. Circuit Court of Appeals for the Ninth Circuit filed by taxpayer. [1*]

Apr. 14—Designation of contents of record on review filed by taxpayer.

Apr. 14—Statement of points filed by taxpayer.

Apr. 15—Proof of service of petition for review and statement of points filed.

Apr. 15—Proof of service of designation of contents of record on review filed. [2]

Docket No. 5806

ALBERT T. QUON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1944

Aug. 14—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 15—Copy of petition served on General Counsel.

Sept. 21—Answer filed by General Counsel.

* Page numbering appearing at top of page of original certified Transcript of Record.

1944

Sept. 21—Request for hearing in Los Angeles, Cal., filed by General Counsel.

Sept. 26—Notice issued placing proceedings on Los Angeles calendar. Service of answer and request made.

1946

Apr. 16—Hearing set June 10, 1946, Los Angeles.

May 27—Motion for a continuance until after 12/31/46 filed by taxpayer. Granted.

May 31—Motion to consolidate proceedings filed by taxpayer.

Oct. 31—Hearing set 11/4/46, Los Angeles, Cal.

Nov. 13—Hearing had before Judge Hill on merits and 14 its. Motion of counsel to consolidate granted. Deposition of Albert T. Quon to be taken by Wednesday, 11/20/46, if desired. Simultaneous briefs due 12/30/46. Reply 1/29/47.

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Dec. 4—Transcript of hearing 11/13/46 filed.

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1946

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Mar. 28—Memorandum findings of fact and opinion rendered, Judge Hill. Decision will be entered for the respondent.

Mar. 31—Decision entered, Judge Hill, Div. 2.

Apr. 14—Petition for review by U. S. Circuit Court of Appeals for the Ninth Circuit filed by taxpayer.

Apr. 14—Designation of contents of record on review filed by taxpayer.

Apr. 14—Statement of points filed by taxpayer.

Apr. 15—Proof of service of petition for review and statement of points filed.

Apr. 15—Proof of service of designation of contents of record on review filed. [3]

The Tax Court of the United States

Docket No. 5806

ALBERT T. QUON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions this court for a redetermination of his federal income tax liabilities for the taxable year ended December 31st, 1941, as determined by the Commissioner of Internal Revenue in a notice of deficiency (Bureau symbols LA:IT:90D:PB), and as a basis of this proceeding alleges as follows:

1. That the petitioner is an individual residing at 1051 South Gramercy Place, Los Angeles 6, California; and that he filed a return for the year involved herein with the Collector for the Sixth District of California.

2. That the notice of deficiency, a copy of which marked Exhibit "A" is attached hereto, was mailed to the petitioner on May 27th, 1944.

3. That the deficiency determined by the Commissioner was \$9,835.08, and that the entire amount thereof is involved in this proceeding.

4. That the determination of tax as set forth in said notice of deficiency is based upon the following

error: Inclusion in the [4] gross income of the petitioner of an amount of \$18,189.88, alleged to have been derived by the petitioner from certain trusts.

5. The facts upon which petitioner relies as sustaining the above assignments of error are as follows:

(a)(1) That on or about May 1st, 1941, he and his wife, Lily Ho Quon, as trustors, executed an indenture of trust naming their daughter, Lillian Mae Quon, sole beneficiary and one Nathan Quon trustee, and transferring to the said trust an undivided 12½% interest in a certain importing and sales business known as Quon-Quon Company and theretofore owned by the trustors as community or joint property, a copy of the said indenture of trust being attached hereto and marked Exhibit "B".

(a)(2) That also on or about the 1st day of May, 1941, the petitioner and his wife, Lily Ho Quon, as trustors, executed a trust naming their daughter, Alberta Pauline Quon, as beneficiary, and one King Quon as trustee, the said indenture being in all other respects the same as the indenture a copy of which is attached hereto as Exhibit "B".

(a)(3) That also on or about the 1st day of May, 1941, the petitioner and his wife, Lily Ho Quon, as trustors, executed a trust naming their daughter, Jeannette Quon, as beneficiary and one C. Melvin McCuen as trustee, the said indenture being in all other respects the same as the indenture a copy of which is attached hereto as Exhibit "B".

(a)(4) That also on or about the 1st day of May, 1941, the petitioner and his wife, Lily Ho Quon, as trustors, executed a trust [5] naming their son, Ronald Quon, as beneficiary and one Quon Hong Kuey as trustee, the said indenture being in all other respects the same as the indenture a copy of which is attached hereto as Exhibit "B".

(a) That immediately upon the execution of the said trusts, petitioner and his wife, together with the trustees hereinabove named, formed a limited partnership under the laws of the State of California, naming petitioner and his wife as general partners and the said trustees as limited partners, transferring thereto their respective interests in said Quon-Quon Company, and filing and recording a copy of the Certificate of Limited Partnership, a copy thereof being attached hereto and marked Exhibit "C".

(c) That all of the trustees named in the said trusts are mature business men and that each of them is engaged in a separate business and that none of them is subject to the influence and control of the petitioner.

(d) That under the agreement of limited partnership contained in the Certificate a copy of which is attached hereto as Exhibit "C" any limited partner can withdraw from the partnership and thereby cause the dissolution of the said partnership.

(e) That the petitioner is a Chinese citizen and that he was prompted in the creation of the said trusts chiefly by the effects [6] of said citizenship and more particularly, because of the freezing of funds of certain alien residents in pursuance of Executive Order 8389 issued April 10th, 1940; that because of said conditions with respect to the funds of alien residents and the general uncertainties resulting therefrom, petitioner was impelled to protect his children who are United States citizens by setting up the trusts involved herein.

(f) That distribution of income were made by the said partnership during the taxable year involved herein and that the said distributions were invested by the trustees in high-grade securities.

(g). That the beneficial interests created by the said trusts are valid, subsisting and irrevocable and that no portion of the income therefrom belongs to the petitioner.

Wherefore, petitioner prays that the Tax Court may hear this petition and determine that there is no deficiency due from the petitioner, and for such other relief as the Court may deem proper.

/s/ GEORGE T. ALTMAN,

Attorney for Petitioner,

215 West Seventh Street,

Los Angeles 14, California.

State of California,
County of Los Angeles—ss.

Albert T. Quon, being duly sworn, deposes and says, that he is the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts therein stated are true.

/s/ ALBERT T. QUON.

Subscribed and sworn to before me this 10th day of August, 1944.

/s/ ALICE KORT,

Notary Public in and for said County and State.

My commission expires 12/20/46. [7]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles, 13, California

May 27, 1944

Office of Internal Revenue Agent in Charge
Los Angeles Division

Mr. Albert T. Quon
1051 South Gramercy place
Los Angeles, 6, California

Dear Mr. Quon:

You are advised that the determination of your income tax liability for the taxable year ended De-

cember 31, 1941, discloses a deficiency of \$9,835.08, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States at its principal address, Washington, D.C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

very truly yours,

ROBERT E. HANNEGAN,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent
in Charge.

PB:VaC

Enclosures:

Statement

Form of Waiver [8]

Statement

LA:IT:90D:PB

Mr. Albert T. Quon
 1051 South Gramercy Place
 Los Angeles 6, California

Tax Liability for the Taxable Year
 Ended December 31, 1941

	Liability	Assessed	Deficiency
Income tax	\$17,718.01	\$7,882.93	\$9,835.08

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated July 30, 1943, to your protest dated October 13, 1943, and to the statements made at the conference held.

A copy of this letter and statement has been mailed to your representative, Mr. George T. Altman, 215 West Seventh Street, Los Angeles 14, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustment to Net Income

Net income as disclosed by return.....	\$26,816.67
Additional income:	
Income of trusts.....	18,189.88
Net income adjusted	<u>\$46,006.55</u>

Explanation of Adjustment

Income reported in the aggregate amount of \$36,379.76 in the fiduciary returns filed for the alleged Ronald Quon, Jeanette Quon, Alberta Pauline Quon and Lillian Mae Quon trusts, purportedly established for your four minor children

by you and your spouse, as [9] so-called co-trustors, is includable in your income to the extent of the \$18,189.88 under the provisions of section 22(a), 166 and 167 of the Internal Revenue Code.

Computation of Alternative Tax

Net income adjusted.....		\$45,006.55
Plus: Net long-term capital loss.....		771.48
		<hr/>
Ordinary net income.....		\$45,778.03
Less: Personal exemption	\$ 350.00	
Credit for dependents.....	1,200.00	1,550.00
		<hr/>
Balance (surtax net income).....		\$44,228.03
Less: Earned income credit.....		557.16
		<hr/>
Net income subject to normal tax.....		\$43,670.87
Normal tax at 4% on \$43,670.87.....	\$ 1,746.83	
Surtax on \$44,228.03.....	16,205.42	
		<hr/>
Partial tax		\$17,952.25
Minus: 30% of net long-term capital loss.....		231.44
		<hr/>
Alternative tax		\$17,720.81

Computation of Tax

Net income adjusted.....		\$45,006.55
Less: Personal exemption	\$ 350.00	
Credit for dependents.....	1,200.00	1,550.00
		<hr/>
Balance (surtax net income).....		\$43,456.55
Less: Earned income credit.....		557.16
		<hr/>
Net income subject to normal tax.....		\$42,899.39
Normal tax at 4% on \$42,899.39.....	\$ 1,715.98	
Surtax on \$43,456.55	15,791.97	
		<hr/>
Total		\$17,507.95

Alternative tax	\$17,720.81
Less: Income tax paid at source.....	2.80
<hr/>	
Correct income tax liability.....	\$17,718.01
Income tax assessed:	
Original, account No. 374712.....	7,882.93
<hr/>	
Deficiency of income tax.....	\$ 9,835.08

EXHIBIT "B"

LILLIAN MAE QUON TRUST

This Indenture of Trust, made and executed this first day of May, 1941, by and between Albert T. Quon and Lily Ho Quon, his wife, both of the City of Los Angeles, County of Los Angeles, State of California, Trustors, and Nathan Quon, now residing at 1179 Fifth Avenue in the city of San Diego, California, Trustee,

Witnesseth:

That Whereas Albert T. Quon now owns and operates an importing and sales business under the firm name of "Quon-Quon Company" at 843 South Los Angeles Street in the city of Los Angeles, California, which business is community or joint property of Trustors; and

Whereas Lillian Mae Quon, who was born on August 1st, 1932, is the daughter of Trustors; and

Whereas Trustors desire to make provision and settlement for the benefit of their said daughter by irrevocable transfer and conveyance, in trust, of an interest in said business,

Now, Therefore, Trustors do hereby irrevocably assign, grant, convey, transfer and deliver to Trustee and to his successor or successors, an undivided twelve and one-half percent ($12\frac{1}{2}\%$) interest in the aforesaid business, subject to the terms and provisions of the Certificate of the Limited Partnership hereinafter referred to, in trust, to hold, manage and distribute as hereinafter provided, to-wit:

1. Concurrently with the execution of this indenture, said business shall be reorganized as a limited partnership and Trustee shall become a limited partner therein. As such limited [12] partner and as Trustee under this Trust Agreement, he shall have a twelve and one-half percent ($12\frac{1}{2}\%$) interest in said business and shall be entitled to receive twelve and one-half percent ($12\frac{1}{2}\%$) of the net profits therefrom and said share of the profits shall be credited to the Trustee and distributed to him from time to time, pro rata with distribution to the general partners in said business.

2. Trustors shall be general partners in said limited partnership. Said limited partnership shall continue for twenty-five (25) years unless sooner terminated by the death, withdrawal or transfer of interest of one of the general or limited partners.

3. To carry out the purposes of this trust and subject to any limitations herein expressed, the Trustee is vested with the following powers and

discretions, in addition to any now or hereafter conferred by law, affecting the trust and the trust estate:

a. Upon termination, dissolution or reorganization of said limited partnership, to reinvest his distributive share of the proceeds therefrom, or any part thereof, in the capital assets or capital stock of any partnership, corporation or other company which may be organized for the purpose of acquiring the assets and continuing the operation of said business.

b. To sell or exchange trust assets and to purchase other assets or invest trust funds and/or to borrow money and to obligate the trust estate for the repayment thereof and/or to encumber the trust estate or any part thereof by mortgage, deed of trust, pledge or otherwise, only with the written consent of the beneficiary after she reaches the age of twenty-one (21) years and [13] only with the written consent of the parents or legal guardian of the beneficiary before she reaches the age of twenty-one (21) years. If the parents of beneficiary die before termination of this trust, the Trustee is requested to seek and consider the advice of the Trustees of the trust estates created concurrently herewith for the benefit of the other children of Trustors before selling or exchanging trust assets, investing trust funds, borrowing money for the benefit of the trust estate and/or encumbering the trust estate or any part thereof.

4. When said beneficiary, Lillian Mae Quon, shall reach the age of twenty-one (21) years, the Trustee shall thereafter pay to her from the income and/or principal of the trust estate, such amount as in his discretion is necessary to enable her to maintain the standard of living to which she has been theretofore accustomed if her parents or surviving parent or husband is not ready, willing and able to then provide such adequate funds for her. Provided, however, that said monthly payments for the maintenance of said beneficiary shall not exceed the current net income from said trust estate unless such net income shall be less than One Hundred Dollars (\$100.00) per month, in which event such payments may be made partially or wholly from accumulated income or capital.

5. When the beneficiary reaches the age of twenty-one (21) years the Trustee shall pay or transfer to beneficiary one-fourth ($\frac{1}{4}$) of the accumulated income and principal of said estate, other than the partnership interest in said Quon-Quon Company or the successor thereof if said business has not been theretofore [14] liquidated. When said beneficiary shall reach the age of twenty-five (25) years the Trustee shall pay to her one-third ($\frac{1}{3}$) of the remaining accumulated income and principal of said trust estate, other than the partnership interest in Quon-Quon Company or the successor thereof if said business has not been theretofore liquidated. When said beneficiary shall reach the age of thirty (30) years the Trustee shall pay to her one-half ($\frac{1}{2}$) of the remaining accu-

mulated income and principal of said trust estate, other than the partnership interest in Quon-Quon Company or the successor thereof if said business has not been theretofore liquidated. When said beneficiary reaches the age of thirty-five (35) years the Trustee shall pay and/or transfer to her the entire remaining estate and this trust shall thereupon terminate.

6. Should said beneficiary die before reaching the age of twenty-one (21) years, the remainder of the trust estate shall go immediately to her issue, or if she should die without issue before reaching the age of twenty-one (21) years, then the remainder of said trust estate shall be divided equally and one part shall be transferred and added to each of the then existing trust estates of the surviving children of Trustors, which trust estates are created by Trustors concurrently here with or which may be hereafter created by Trustors. If the beneficiary shall die after reaching the age of twenty-one (21) years the remainder of said trust estate shall thereupon be distributed to her heirs, devisees or legatees, subject to administration of her estate.

7. The interests of the beneficiary in principal or income shall not be subject to claims of her creditors or others nor [15] to legal process, and may not be voluntarily or involuntarily alienated or encumbered.

8. The Trustee shall, upon written request of the beneficiary at anytime after she reaches the

age of twenty-one (21) years or upon written request of her parents or legal guardian before she reaches the age of twenty-one (21) years, procure a fidelity bond in an amount specified in such request but not exceeding the value of the trust estate, insuring the trust estate and beneficiary against any loss resulting from his defalcation or breach of trust. The premiums on such bonds shall be payable out of trust funds.

9. The Trustee shall be entitled to receive reasonable compensation from the trust estate for his services. For his ordinary and usual duties in receiving, depositing, disbursing and keeping a record of trust funds and filing tax return, said compensation shall be Fifty Dollars (\$50.00) per year. Any additional compensation for extraordinary services rendered by the Trustee shall be payable only on the approval of a court of competent jurisdiction.

10. If the Trustee is temporarily absent from the State of California for an extended period by reason of Military Service or otherwise a co-trustee may be appointed by a court of competent jurisdiction to act during the absence of the regular Trustee. Such co-trustee shall have all of the authority of the regular Trustee during the latter's absence from the State.

11. The Trustee may resign this trusteeship at any time by filing an application with a court of competent jurisdiction [16] stating his desire to resign and requesting the court to appoint a suc-

cessor Trustee. Such resignation shall not become effective until a new Trustee is appointed and has accepted said appointment whereupon the retiring Trustee shall account to and turn over to the new Trustee all of the assets of the trust estate.

In Witness Whereof Trustors have executed this Indenture on the day and year first above written.

ALBERT T. QUON

LILLY HO QUON

Trustors.

I hereby accept the foregoing Trust and agree to hold, use, disburse and distribute the Trust Estate and to perform the duties of Trustee in accordance with the provisions of the foregoing Trust Indenture.

Dated: May 1st, 1941.

Nathan Quon

Trustee. [17]

State of California,
County of Los Angeles—ss.

On This 1st day of May, 1941, before me, Raymond B. Wells, a Notary Public in and for said County and State, personally appeared Albert T. Quon and Lily Ho Quon known to me to be the persons whose names are subscribed to the foregoing Indenture of Trust, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my

hand and affixed my official seal the day and year in this Certificate first above written.

.....

Notary Public in and for said County and State.

[Notarial Seal] [18]

EXHIBIT "C"

CERTIFICATE OF LIMITED PARTNERSHIP OF QUON-QUON COMPANY

The undersigned, being desirous of forming a limited partnership pursuant to the laws of the State of California, do hereby make and severally sign the following certificate for that purpose.

I.

The name under which the partnership is to be conducted is Quon-Quon Company.

II.

The character of the business and the purpose of said partnership is to acquire, own and operate the importing and sales business now owned and being operated by Albert T. Quon under the firm name of Quon-Quon Company at 843 South Los Angeles Street in the city of Los Angeles, County of Los Angeles, State of California. The partnership may engage in any other line of business for which its present or future assets and facilities may be adaptable.

III.

The location and principal place of business of said partnership shall be 843 South Los Angeles Street, Los Angeles, California. The mailing address of said business is 843 South Los Angeles Street, Los Angeles, California. [19]

IV.

The place of residence of each member of said partnership is as follows:

Albert T. Quon, general partner, 1051 South Gramercy Place, Los Angeles, California;

Lily Ho Quon, general partner, 1051 South Gramercy Place, Los Angeles, California;

King Quon, limited partner, 1179 Fifth Avenue, San Diego, California;

Nathan Quon, limited partner, 1179 Fifth Avenue, San Diego, California;

C. Melvin McCuen, limited partner, 401 Twenty-third Street, Santa Monica, California;

Quon Hong Kuey, limited partner, 397 South Coast Boulevard, Laguna Beach, California.

V.

(a) The term for which the Partnership is to exist is twenty-five (25) years.

(b) The Partnership shall be dissolved upon the occurrence of any of the following circumstances:

(1) The expiration of twenty-five (25) years from the date hereof.

(2) The death of any general or limited partner.

(3) The transfer or attempted transfer, voluntary or involuntary, of the interest of any general or limited partner in the Partnership; provided, however, [20] that the substitution of a new Trustee as a limited partner, pursuant to the provisions of paragraph X hereof, shall not be deemed such a transfer.

(4) The retirement or withdrawal from the Partnership of any general or limited partner. If any general or limited partner desires at any time to withdraw or retire from the Partnership, he or she shall, at least two calendar months prior to such withdrawal or retirement, give the remaining general and limited partners a notice in writing of his or her intention so to do, which notice may be withdrawn at any time prior to the expiration of the first calendar month. If such notice is not so withdrawn, such withdrawal or retirement from the Partnership shall occur and become effective on the last day of the second calendar month.

(c) Notwithstanding any such dissolution, this agreement shall remain in force for the purpose of governing the rights and duties of the parties hereto, until the Partnership has been terminated within the meaning of Section 2424 of the Civil Code of California.

VI.

General Partner, Albert T. Quon, will contribute to the partnership an undivided twenty-five percent

(25%) interest in all of the assets of the aforesaid business now conducted under the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

General Partner, Lily Ho Quon, will contribute to the [21] partnership an undivided twenty-five percent (25%) interest in all of the assets of the aforesaid business now conducted under the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

Limited Partner, King Quon, will contribute to the partnership an undivided twelve and one-half percent ($12\frac{1}{2}\%$) interest in all of the assets of the aforesaid business now conducted under the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

Limited Partner, Nathan Quon, will contribute to the partnership an undivided twelve and one-half percent ($12\frac{1}{2}\%$) interest in all of the assets of the aforesaid business now conducted under the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

Limited Partner, C. Melvin McCuen, will contribute to the partnership an undivided twelve and one-half percent ($12\frac{1}{2}\%$) interest in all of the assets of the aforesaid business now conducted under the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

Limited Partner, Quon Hong Kuey, will contribute to the partnership an undivided twelve and one-half percent ($12\frac{1}{2}\%$) interest in all of the assets of the aforesaid business now conducted under

the firm name of Quon-Quon Company, subject to a pro rata share of the liabilities of said business.

The assets of said business contributed by the general and limited partners consist of the lease on the premises now being used by said business consisting of the second and third floors of the building located at 843 South Los Angeles Street, Los [22] Angeles, California, all of the furniture and fixtures, merchandise and accounts and notes receivable and all cash on hand and in bank, subject to all notes, accounts payable and other liabilities of said business, all as reflected by the books of account of said business, at the commencement of business on May 1st, 1941. The agreed value of the interest in said business contributed by each limited partner is \$11,268.06.

VII.

Each limited partner and each of the general partners has agreed and does hereby agree to contribute to the partnership capital a pro rata amount, based on his or her respective interest in said partnership assets and profits, only out of his or her share of the net profits from said business, sufficient in the aggregate to pay all obligations of said business heretofore or hereafter incurred and to provide adequate working capital.

VIII.

No definite time has been agreed upon for the return of the contributions of the limited partners. Their pro rata shares of the capital assets of the partnership shall be returned to them, concurrently

and pro rata with distribution to the general partners, upon termination of the partnership and liquidation of its assets.

IX.

Each limited partner shall receive twelve and one-half percent ($12\frac{1}{2}\%$) of the net profits of the partnership business. In determining the net profits a nominal salary, not exceeding the sum of Six thousand dollars (\$6,000.00) per year, may, at his option, be credited and paid to Albert T. Quon while he is actively [23] engaged in the management of said business and any such salary so credited and/or paid to said general partner shall, as between the parties hereto, be deemed to be an operating expense and not part of the profits of said business. The right to receive any such salary for any part of any calendar year shall be deemed to have been waived by said general partner excepting as to such amounts as may be actually credited as salary to said general partner in the books of account of said business on or before the last day of each respective calendar year.

X.

Limited partner, King Quon, holds all of his said partnership interest as Trustee for Alberta Pauline Quon; Nathan Quon holds all of his said partnership interest as Trustee for Lillian Mae Quon; C. Melvin McCuen holds all of his said partnership interest as Trustee for Jeannette Quon; Quon Hong Kuey holds all of his said partnership interest as

Trustee for Ronald Quon; each pursuant to the terms of a trust agreement dated May 1st, 1941, and executed by Albert T. Quon and Lily Ho Quon, Trustors. In the event that any of said limited partners ceases to act as Trustee of said respective trust, his successor Trustee may be substituted as a limited partner in his place.

In Witness Whereof, the parties hereto have executed this agreement on the 1st day of May, 1941.

ALBERTA T. QUON

LILY HO QUON

General Partners

C. MELVIN McCUEN

Limited Partner

NATHAN QUON

KING QUON

QUON HONG KUEY

Limited Partners [24]

State of California,
County of Los Angeles—ss.

Albert T. Quon, Lily Ho Quon and C. Melvin McCuen, being each duly sworn says that he and she executed the foregoing Certificate of Limited Partnership and that all of the matters therein stated are true.

ALBERT T. QUON

LILY HO QUON

C. MELVIN McCUEN

Subscribed and sworn to before me this 1st day of May, 1941.

RAYMOND B. WELLS

Notary Public in and for said County and State.

[Seal]

State of California,
County of Orange—ss.

Quon Hong Kuey, being duly sworn says that he executed the foregoing Certificate of Limited Partnership and that all of the matters therein stated are true.

QUON HONG KUEY

Subscribed and sworn to before me this 1st day of May, 1941.

MARIE TROST

Notary Public in and for said County and State.

My commisison expires Nov. 17, 1941.

[Seal] [25]

State of California,
County of San Diego—ss.

King Quon and Nathan Quon, being each duly sworn says that he executed the foregoing Certificate of Limited Partnership and that all of the matters therein stated are true.

KING QUON

NATHAN QUON

Subscribed and sworn to before me this 1st day of May, 1941.

N. STEINMETZ

Notary Public in and for said County and State.

[Seal]

Received and filed Aug. 14, 1944. [26]

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the allegations contained in paragraph 4 of the petition.

5. (a)(1) to (a)(4), inclusive. Denies the allegations contained in subparagraphs (a)(1) to (a)(4), inclusive, of paragraph 5 of the petition.

(b) to (g), inclusive. Denies the allegations contained in subparagraphs (b) to (g), inclusive, of paragraph 5 of the petition. [27]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL ECC
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. Neblett,
Division Counsel.
Earl C. Crouter,
B. M. Coon,
Special Attorneys,
Bureau of Internal Revenue.

BMC/mm 9/11/44.

Received and filed Sept. 21, 1944. [28]

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT
AND OPINION

Hill, Judge: Respondent determined a deficiency in the income tax of each petitioner for the year 1941 in the amount of \$9,835.08. The question is whether certain income reported as trust income is taxable to petitioners. Petitioners filed separate returns for 1941 on a community basis with the collector of internal revenue for the sixth district of California at Los Angeles. The cases were consolidated at the hearing. [29]

FINDINGS OF FACT

Petitioners are husband and wife residing in Los Angeles, California. Unless otherwise indicated petitioner will hereinafter be used to refer to Albert T. Quon. Petitioner is a resident alien. Petitioner, Lily Ho Quon, is a citizen. Prior to May 1941 petitioner, as sole proprietor, operated a business under the name of Quon-Quon Company. The business involved importing Chinese decorative merchandise and wholesaling it.

On May 1, 1941, petitioners, as co-trustors, created four separate trusts, one for each of their four children, Alberta Pauline born June 19, 1930, Lillian Mae born August 1, 1932, Jeanette born February 12, 1936, and Ronald born May 7, 1937. These children are all citizens. Concurrently with the creation of these trusts Quon-Quon Company was reorganized as a partnership, petitioners being constituted general partners and the trustees of the four trusts being constituted limited partners.

Each of the four trusts, as here material, are essentially similar except for the identity of the beneficiaries and trustees. Ronald's trust will be described as typical of all the trusts. Ronald's trust indenture recites that petitioner owns and operates Quon-Quon Company and that petitioners desire to make provision and settlement for their son by irrevocable transfer in trust of an interest in such business. Petitioners, as co-trustors, irrevocably assigned to Ronald's trustee an undivided $12\frac{1}{2}$ per cent interest in the business of Quon-Quon

Company, subject to the terms of the partnership hereafter described. The trust instrument provides that: [30]

1. Concurrently with the execution of this indenture, said business shall be reorganized as a limited partnership and Trustee shall become a limited partner therein. As such limited partner and as Trustee under this Trust Agreement, he shall have a twelve and one-half percent ($12\frac{1}{2}\%$) interest in said business and shall be entitled to receive twelve and one-half percent ($12\frac{1}{2}\%$) of the net profits therefrom and said share of the profits shall be credited to the Trustee and distributed to him from time to time, pro rata with distribution to the general partners in said business.

2. Trustors shall be general partners in said limited partnership. Said limited partnership shall continue for twenty-five (25) years unless sooner terminated by the death, withdrawal or transfer of interest of one of the general or limited partners.

The trustee is vested with power:

a. Upon termination, dissolution or reorganization of said limited partnership, to reinvest his distributive share of the proceeds therefrom, or any part thereof, in the capital assets or capital stock of any partnership, corporation or other company which may be organized for the purpose of acquiring the assets and continuing the operation of said business.

The trustee is further authorized to sell or exchange trust assets, purchase other assets, invest trust funds or borrow money and obligate or encumber the trust estate therefor, all only with the written consent of the beneficiary after he attains 21 years of age or only with the written consent of the beneficiary's parents prior to such time.

The trust instrument provides that when Ronald reaches 21 years of age the trustee shall thereafter pay him from the income and/or the principal of the trust estate such amount as in the trustee's discretion is necessary to enable Ronald to maintain the standard of living to which he has been theretofore accustomed if his parents or surviving parent is not ready, willing and able to provide such funds for him. [31]

When Ronald successively reaches the ages of 21, 25 and 30, the trustee shall pay him, respectively, one-fourth, one-third and one-half of the then accumulated income and principal of the trust estate other than the partnership interest in the Quon-Quon Company. When Ronald reaches 35 years of age the trustee shall pay him the entire remaining estate and the trust shall terminate. If Ronald should die before attaining 21 years of age, the trust estate goes to his issue or, if none, equally to the remaining trusts. If Ronald dies after reaching 21 years of age, the trust estate goes to his heirs, devisees or legatees.

The trustee is entitled to compensation for ordinary and usual services in the amount of \$50 a year. If the trustee is to be absent from the State

of California for an extended period of time a co-trustee may be appointed by a competent court to act during such period of absence. If the trustee resigns a competent court shall appoint a successor.

Concurrently with the creation of the trusts, Quon-Quon Company was reorganized into a partnership. Petitioners were general partners, each having a 25 per cent interest, and the four trustees of the four trusts were limited partners, each having a $12\frac{1}{2}$ per cent interest in the partnership. Each general partner contributed to the partnership an undivided 25 per cent interest in the Quon-Quon Company business. Each limited partner contributed to the partnership an undivided $12\frac{1}{2}$ per cent interest in such business, such $12\frac{1}{2}$ per cent interest being valued at \$11,268.06.

The partnership is for a term of 25 years. It can be dissolved by the death of a general or limited partner, the transfer or attempted transfer [32] of the interest of any general or limited partner, the retirement or withdrawal from the partnership of any general or limited partner. The substitution of a successor trustee as a limited partner does not operate to dissolve the partnership. The partnership agreement provides.

VII.

Each limited partner and each of the general partners has agreed and does hereby agree to contribute to the partnership capital a pro rata amount, based on his or her respective interest in said partnership assets and profits, only out of his or her share of the net profits from said

business, sufficient in the aggregate to pay all obligations of said business heretofore or hereafter incurred and to provide adequate working capital.

VIII.

No definite time has been agreed upon for the return of the contributions of the limited partners. Their pro rata shares of the capital assets of the partnership shall be returned to them, concurrently and pro rata with distribution to the general partners, upon termination of the partnership and liquidation of its assets.

Petitioner discussed the advisability of creating trusts for his children as early as 1939 but nothing was then done. In 1940 petitioner went to China to purchase merchandise for the business and was absent from this country approximately from April to August, inclusive. During this period an employee named Fung was in control of the business and operated it. After petitioner returned from China in August 1940 he became concerned over the possibility that his business assets might be frozen by executive order since certain alien property in this country was becoming subject to such controls. Early in 1941 petitioner discussed the problem with various friends and advisors. The plan to create the trusts and the partnership, which was [33] executed May 1, 1941, grew out of these discussions and was prompted by various considerations. One consideration was petitioner's parental desire to make provision for the security of his

children. Another consideration was the fear of having the business assets frozen by the Government since petitioner's children and wife were citizens and partial ownership of the business assets was considered a practical method of avoiding seizure to such extent. Another consideration was the reduction of taxes.

After the creation of the partnership the business continued to be conducted in all material respects in the same manner as it had been conducted prior to the partnership. The limited partners played no part in the conduct of the business. Capital and drawing accounts were set up on the partnership books for each limited partner. To each limited partner's capital account was credited 12½ per cent of the partnership's net profit. Checks were drawn from time to time by petitioner on the partnership's commercial account, payable to various banks and brokers, which checks were ratably charged against the limited partner's drawing accounts. These checks were drawn to purchase securities which were delivered by petitioner to the trustees. Later the trustees themselves directly purchased securities for the trusts from amounts credited to them on the partnership books. These purchases were approved by the petitioners as parents of the beneficiaries.

On petitioners' returns the income from Quon-Quon Company from January 1 to April 30, 1941, inclusive, the period prior to the formation of the partnership, was shown in the amount of \$40,580.19, which amount included petitioner's salary of \$4,000

from the partnership for the 8-month [34] period. This amount was also reported on a community basis. Each trust reported as its share of the partnership income for 1941 the amount of \$9,094.94, or an aggregate amount of \$36,379.76. Respondent, in his deficiency notices to petitioners, attributed one-half of this latter amount, or \$18,189.88, to each of the petitioners. In explanation of this determination respondent stated:

Income reported in the aggregate amount of \$36,379.76 in the fiduciary returns filed for the alleged Ronald Quon, Jeannette Quon, Alberta Pauline Quon and Lillian Mae Quon trusts, purportedly established for your four minor children, by you and your spouse, as so-called co-trustors, is includible in your income to the extent of \$18,189.88 under the provisions of sections 22(a), 166 and 167 of the Internal Revenue Code.

OPINION

The instant situation is, in our opinion, controlled by *Commissioner v. Tower*, 327 U. S. 280, and *Lusthaus v. Commissioner*, 327 U. S. 293. We have here a situation wherein a sole proprietorship originated, operated, and controlled by petitioners is converted into a partnership which purports, by trust mediums, to include as limited partners petitioners' minor children. No capital not originating with petitioners has been contributed to the partnership by the trusts. No services are contributed to the partnership by the trustees. The business for all prac-

tical purposes continues to be operated and controlled after the conversion to the partnership form as before.

The only conceivable element in this case which could possibly be considered as excepting the instant situation from the familiar family partnership pattern is petitioner's claimed business purpose in making the trust [35] and partnership arrangement to avoid the freezing of assets. Petitioners stress this aspect of the case but it does not, in our opinion, serve to validate the attempted partnership for income tax purposes. It is true and we have so found that petitioner was partially motivated by a desire to avoid the freezing of his business assets. It is also true and we also found that petitioner was partially motivated by a desire to make provision for the security of his children and by a desire to reduce taxes. Furthermore, while the desire to avoid the freezing of assets by transferring ownership to citizens is, in one sense, a business purpose, it is not the kind of business purpose, in our judgment, which is indicative of the essential intent to really and truly join together for the purpose of carrying on business as partners. The desire to avoid the freezing of assets in fact indicates that the arrangement was intended merely as a technical shifting of title from alien to citizen. The purported limited partners in a sense constituted mere depositories of title for purposes other than those connoting a true partnership. We therefore conclude that this aspect of the case fails to remove it from the ambit of the *Tower* and *Lusthaus* rationale.

We hold that respondent correctly attributed the income of the trusts equally to petitioners.

Entered March 28, 1947.

Decisions will be entered for respondent. [36]

The Tax Court of the United States
Washington

Docket No. 5805

LILY HO QUON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered March 28, 1947, it is

Ordered and Decided: That there is a deficiency in income tax of \$9,835.08 for the year 1941.

Entered March 31, 1947.

/s/ SAMUEL B. HILL,
Judge. [37]

The Tax Court of the United States
Washington

Docket No. 5806

ALBERT T. QUON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered March 28, 1947, it is

Ordered and Decided: That there is a deficiency in income tax of \$9,835.08 for the year 1941.

Entered March 31, 1947.

/s/ SAMUEL B. HILL,
Judge. [38]

In the United States Circuit Court of Appeals
for the Ninth Circuit

T.C. Dockets Nos. 5805 and 5806

LILY HO QUON and ALBERT T. QUON,
Petitioners,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Lily Ho Quon and Albert T. Quon, petitioners, by George T. Altman, counsel, hereby file their petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decisions by The Tax Court of the United States entered on March 31, 1947, determining deficiencies in the federal income taxes of each of petitioners for the calendar year 1941 in the amount of \$9,835.08, and respectfully show:

I.

Jurisdiction

The petitioners are individuals residing at 1051 South Gramercy Place, Los Angeles, California. The jurisdiction of this court is invoked under section 1141 of the Internal Revenue Code.

II.

Nature of the Controversy

The controversy involves the proper determination of the petitioners' liability for federal income taxes for the calendar year 1941.

Petitioners are husband and wife. Petitioner Albert T. Quon is a resident alien. Petitioner Lily Ho Quon is a citizen. They [39] have, and had during the year 1941, four minor children, all of whom were citizens.

Prior to May 1941 petitioners owned as community property a business operated as a sole proprietorship under the name of Quon-Quon Company. The business involved importing Chinese decorative merchandise and wholesaling it. On May 1, 1941, petitioners as co-trustors created four separate trusts, one for each of said children. Concurrently with the creation of these trusts, Quon-Quon Company was reorganized as a partnership, petitioners being constituted general partners and the trustees of the four trusts being constituted limited partners.

The sole question is whether the shares of the earnings of said Quon-Quon Company belonging to said partners under the partnership agreement were taxable to petitioners under the income tax provisions of the Internal Revenue Code. Petitioners contend that they were not.

III.

Scope of Review

The findings of fact of the Tax Court, except for any general statements contained therein which are inconsistent with specific findings of fact, are accepted by petitioners for the purpose of this review. Petitioners, however, being aggrieved by the opinion and conclusions of law of the Tax Court and by its decisions entered pursuant thereto desire to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ GEORGE T. ALTMAN,

Counsel for Petitioners. [40]

State of California,

County of Los Angeles—ss.

George T. Altman, being first duly sworn, says that he is counsel of record in the above-named causes; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

/s/ GEORGE T. ALTMAN.

Subscribed and sworn to before me this 9th day of April, 1947.

[Seal] /s/ BEN H. RUDNICK,

Notary Public in and for said County and State.

Received and filed T.C.U.S. April 14, 1947. [41]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Now come the petitioners herein by their attorney, George T. Altham, and hereby assert the following errors which they intend to urge on review by the United States Circuit Court of Appeals for the Ninth Circuit of the decisions of The Tax Court of the United States rendered in the above causes on March 31, 1947:

1. The Tax Court erred in concluding that the case is controlled by *Commissioner v. Tower*, 327 U. S. 280, and *Lusthaus v. Commissioner*, 327 U. S. 293.

2. The Tax Court erred in entering its decision in each of the dockets included in this proceeding wherein it ordered and decided in each such docket that there is a deficiency in income tax of \$9,835.08 for the year 1941.

/s/ GEORGE T. ALTMAN,
Counsel for Petitioners.

Filed T.C.U.S. April 14, 1947. [42]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.:

You are hereby notified that the petitioners, on

[Title of Circuit Court of Appeals and Cause.]

the 14th day of April, 1947, filed with the Clerk of The Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decisions of The Tax Court of the United States heretofore rendered in the above-entitled causes. Copies of the Petition for Review and Statement of Points as filed are hereto attached and served upon you.

Dated at Los Angeles, California, this 9th day of April, 1947.

Respectfully,

/s/ GEORGE T. ALTMAN,
Counsel for Petitioners.

Personal service of the foregoing notice, together with copies of the Petition for Review and Statement of Points mentioned therein, is hereby acknowledged this 15th day of April, 1947.

/s/ J. P. WENCHEL, C.A.R.
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Filed T.C.U.S. April 15, 1947. [43]

The Tax Court of the United States

Dockets Nos. 5805 and 5806

LILY HO QUON and ALBERT T. QUON,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of The Tax Court of the United
States:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above entitled causes in connection with the petition for review heretofore filed by the petitioners:

1. The docket entries of all proceedings before the Tax Court.
2. Pleadings before the Tax Court, as follows:
 - (a) Petition in Docket No. 5806.
 - (b) Answer in Docket No. 5806.
3. The findings of fact and opinion of the Tax Court.
4. The decisions of the Tax Court.
5. The petition for review.
6. This designation of contents of record on review. The pleadings in Docket No. 5805 are omitted for the reason that they are identical in all material

respects, except as to name of petitioner, with the pleadings in Docket No. 5806. Inclusion of the pleadings in Docket No. 5805 would in consequence constitute mere duplication.

/s/ GEORGE T. ALTMAN,
Attorney for Petitioners. [44]

Personal service of a copy of the foregoing designation is hereby acknowledged as having been made this 15th day of April, 1947.

/s/ J. P. WENCHEL, C.A.R.
Chief Counsel,
Bureau of Internal Revenue.

Filed April 15, 1947. [45]

[Title of Tax Court and Causes.]

CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 45, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 29th day of April, 1947.

[Seal] /s/ VICTOR S. MERSCH, EMT
Clerk, The Tax Court
of the United States.

[Endorsed]: No. 11626. United States Circuit Court of Appeals for the Ninth Circuit. Lily Ho Quon and Albert T. Quon, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed May 12, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

